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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 429

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Petitioner*,

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY and SPECIAL BOARD OF ADJUSTMENT No. 605, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (Brotherhood) prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in Case No. 17184 on May 9, 1969, affirming a judgment of the United States District Court for the Northern District of Eastern Illinois which found that federal courts do not possess jurisdiction to review the lawfulness of awards issued by special boards of adjustment created under the Railway Labor Act to

resolve disputes arising out of the interpretation and application of collective bargaining agreements.

The Court of Appeals' decision establishes a rule that judicial review within the restricted limits permitted of awards made by the National Railroad Adjustment Board and arbitration awards generally is not available as to similar awards made by special boards of adjustment created under that Act to obtain expedition in the settlement of such disputes, as Congress and this Court have found should be provided.

OPINIONS BELOW

The opinion of the Court of Appeals printed in Appendix C hereto is not yet reported. The memorandum and order of the District Court granting summary judgment to the respondent The Atchison, Topeka & Santa Fe Railway Company (Santa Fe) is reported at 286 F. Supp. 397 and is reproduced in Appendix D hereto.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on May 9, 1969 (Appendix B hereto). The jurisdiction of this Court is invoked under Title 28 U.S.C.A., Section 1254.

QUESTIONS PRESENTED

In the opinion of the Petitioner the following questions are presented:

1. Do the United States District Courts possess jurisdiction under Section 3, First (q) of the Railway Labor Act to review the lawfulness of awards issued by special boards of adjustment established pursuant to the provisions of that Act?

---

[1] Special Board of Adjustment No. 605, named as a respondent, did not participate in the litigation and is not an indispensable party.

2. Do United States District Courts possess jurisdiction under Sections 1331 and 1337 of the Judicial Code to review, within the limits set forth in Section 3, First (q) of the Railway Labor Act, the lawfulness of awards issued by such special boards of adjustment?

3. Assuming that the Court finds that the District Courts have jurisdiction under either of the above statutes to review such awards, was the award issued by Special Board of Adjustment No. 605 entered in excess of its jurisdiction within the meaning of Section 3, First (q) of the Railway Labor Act?

STATUTES INVOLVED

Statutory provisions involved are Section 3, First (p) and (q), Section 3, Second of the Railway Labor Act, and Sections 1331 and 1337 of the Judicial Code. These statutory provisions are set forth in full in Appendix A hereto.

STATEMENT OF THE CASE

The Brotherhood's petition to the lower court for judicial review of an award issued by Special Board of Adjustment No. 605 sought a decision that, contrary to the provisions of the Railway Labor Act, the Special Board had exceeded the scope of its jurisdiction in reaching the decision on the dispute submitted to it. The Brotherhood disclaimed any prayer for a review of and a ruling on the merits of the underlying controversy by the lower court.

Summary judgment was granted in favor of the defendant Santa Fe on a finding by the District Court, 286 F. Supp. 397, 398, that it did not have jurisdiction to review an award made by a special board of adjustment created under the Act even if that board

had exceeded its own jurisdiction.[2] The Brotherhood's motion for a new trial was denied on July 15, 1968. Oral argument thereon was refused by the District Court.

The Court of Appeals affirmed the judgment of the District Court on the issue of that Court's jurisdiction, and noted that its decision was consistent with the national labor policy of avoiding court review of the "merits" of arbitration awards under collective bargaining agreements.

The Brotherhood is the collective bargaining representative of certain individuals who have been employed for a number of years beginning in 1937 in the loading and unloading of freight, described as "dock work"; for National Car Loading Corporation (National) in the Chicago, Illinois area. Some of these individuals performed this work for the account of National when they became employees of Chicago & North Western Railway Company (C&NW) during a period beginning in 1944 when that railroad had a contract with National to perform the described work at a location on the lines of that railroad. Some of the same individuals continued to perform similar work as employees of the Santa Fe subsequent to a transfer of

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[2] The District Court, after so ruling, briefly discussed the issue presented to the limited extent possible based on the pleadings then before it, and stated that "even if this Court were to find jurisdiction, the limited scope of review over awards made by the National Railroad Adjustment Board would preclude review of this case." The District Court's ultimate ruling, after its receipt of the Brotherhood's motion for a new trial, to which was attached in support thereof a Motion for Judgment on the Pleadings or Summary Judgment and supporting memorandum, was that there was no Federal jurisdiction to review awards of special boards of adjustment created under the Railway Labor Act. 286 F. Supp. 397, 398.

the work from the C&NW to the Santa Fe pursuant to a contract entered into between the Santa Fe and National in February 1957. Some of the individuals involved continued to perform similar work directly for National when in the latter part of 1965 National undertook to perform the work on its own behalf without the use of Santa Fe facilities. Some of the Santa Fe employees who had performed these duties were not employed by National at or subsequent to August 1965 when it undertook to perform the work directly for its own account.

The Brotherhood and Santa Fe are parties to a collective bargaining agreement negotiated under the Railway Labor Act and entered into on February 7, 1965 (Exhibit 2 to Pet.) which provides certain job stabilization benefits for Santa Fe employees. Pursuant to the terms of the agreement, the Brotherhood made demands on the Santa Fe for the application of such benefits for those Santa Fe employees who failed subsequent to 1965 to secure positions with National for the continued performance of its dock work. Santa Fe refused to honor the provisions of the agreement.

Article VII of the said 1965 job stabilization agreement (Exh. 2, p. 8) provides for the resolution of disputes arising as to the interpretation and application of the provisions of that agreement by recourse to a disputes committee established in accordance with specific terms of the agreement. Such a disputes committee was created and has been classified as Special Board of Adjustment No. 605 by the National Mediation Board in accordance with the provisions of the Railway Labor Act (Exh. 5 to Pet.)

Section 3 of Article VII of the agreement *inter alia* provides that a notice in writing submitting a dispute

to the committee [Special Board] "shall state specifically the questions to be submitted to the committee [Board] for decision; and the committee [Board] shall confine itself strictly to decisions as to the questions so specifically submitted to it."

The dispute as to job stabilization benefits to those individuals who as Santa Fe employees performed the dock work for National but who were not employed by National when it undertook to perform the work directly for its own account was submitted to the Special Board by the Brotherhood by a notice filed on February 11, 1966.

In its submission the Brotherhood framed the specific questions to be answered by the Special Board as follows:

> (1) Are Santa Fe employees with a seniority date of October 1, 1962, and earlier, who prior to August 1, 1965, were engaged in the handling of National Carloading Corporation freight at the Corwith House #1, Chicago, Illinois, entitled to protection under the February 7, 1965 Stabilization Agreement?
>
> (2) If so, shall employees qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?

As shown by the award (Exh. 6 to Pet.), the Special Board did not undertake to resolve the questions submitted to it by the Brotherhood but instead undertook to determine what it conceived to be, and characterized as, the "real issue", to wit: Whether those members

of the Brotherhood described in Question (1) as "Santa Fe employees" were properly to be treated as "employees" within the meaning of the job stabilization agreement. The award (Ex. 6 to Pet.) shows that the Special Board "conceived" and characterized as the "real issue" in the dispute before it to be:

> Whether the group of persons described in Question (1) as "Santa Fe employees" may properly be treated *at this time* as "employees" within the meaning, intent and application of Section 1 of Article I of the National Agreement. (Emphasis supplied.)

In adjudicating this question, the Special Board found that the employees involved did not possess an employment relationship with Santa Fe after August 1, 1965, and used this as a basis for its negative ruling on the questions specifically submitted.

In its adjudication of this separate and unrelated question, the Special Board relied on an interim order of the United States District Court in a separate and unrelated proceeding. The failure of the Special Board to decide the questions specifically submitted to it, its framing of a separate question, and its decision thereon constituted actions outside the competency and jurisdiction of the Special Board and as such invalid under Section 3, First (q), of the Act, 45 U.S.C.A. 153, First (q).

The agreement provided (Art. I, Sec. 1, p. 1 of Exh. 2 to Pet.) that its benefits would be extended to Santa Fe employees:

> . . . who were in active service as of October 1, 1964 . . . and who had two or more years service subject to compensation as of October 1, 1964 will

be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition.

The record before the Special Board shows that in its submission to the Board Santa Fe urged that the "real issue" in the dispute was whether the "individuals involved are *now* Santa Fe employees" (Joint App. Item C, pp. 8, emphasis added). Santa Fe contended that the Special Board had no jurisdiction to determine that question because its resolution required an interpretation of the so-called tri-partite agreement previously entered into by Santa Fe, National and the Brotherhood on February 5, 1957. Accordingly, the Santa Fe requested the Special Board to dismiss the dispute, or hold it in abeyance until the proper tribunal could decide the question of the employment status of the employees involved. (*Ibid,* pp. 9-10).

Coincident with its announced intention to perform its own dock work without use of Santa Fe facilities and employees, National stated that any additional employees needed would be newly hired and become employees of its subsidiary Panda Terminals, Inc., without retention of seniority and other rights and benefits obtained by past performance of the work as employees of Santa Fe and C&NW,[3] and would be covered by an employment contract between the International Brotherhood of Teamsters (Teamsters) and Panda.

Threatened with the loss of its representation of these employees and the loss by such employees of their

[3] As found by United States District Judge Perry in his Findings of Fact, etc., in Civil Action No. 65—C-1199, hereinafter referred to as Judge Perry's interim order (Joint Appendix, Item C, Exhibit C).

seniority and other existing rights and benefits, the Brotherhood instituted in July 1965, an action, No. 65-C-1199 in the United States District Court for the Northern District of Illinois, Eastern Division, against National and its affiliates, seeking an order from the Court directing National, etc., to "take over" employees on the Santa Fe-National roster with seniority and other rights and benefits unimpaired, as National had agreed and was required to do by Section 6 of the tripartite February, 1957 agreement between National, Santa Fe and the Brotherhood.

On August 6, 1965, Judge Perry issued an order granting, as sought by the Brotherhood, a preliminary injunction (Judge Perry interim order, pp. 9-12) enjoining National, etc., from reducing to new employees status and/or withdrawing seniority rights from employees named on the National-Santa Fe seniority roster, employing new employees for the performance of the involved work until all such employees had been employed by National, and the application of the Teamsters contract to such employees.

The Special Board found that the described order of Judge Perry judicially determined that the "employment status" of the employees involved had been shifted from Santa Fe to National. The Special Board determined that the "main thrust" of the Brotherhood's 1965 case against National was that the Santa Fe employees were entitled as a matter of contractual right to become employees of National. The Special Board found and concluded that the interim order of Judge Perry "constituted a severance of the employment relationship theretofore existing" between Santa Fe and the employees involved, and that such severance barred their inclusion as protected employees under

the February 7, 1965 job stabilization agreement between the Brotherhood and Santa Fe.

In its petition to the District Court seeking review of the award within the limits of Section 3, First (q) of the Railway Labor Act, the Brotherhood urged that the Special Board had failed to confine itself to matters within the scope of its jurisdiction by undertaking to frame a question not specifically before it, decide that question by undertaking to interpret a contract and a judicial order with respect thereto beyond the scope of and irrelevant to the questions presented to it by the Brotherhood in excess of its competence and jurisdiction.

The District Court found no jurisdiction to review in any manner awards issued by special boards of adjustment including questions as to whether such a board had exceeded its own jurisdiction in making the award. The Court of Appeals found no jurisdiction under Section 3, First (q) of the Railway Labor Act because such act permitted judicial review only of awards issued by the divisions of the National Railroad Adjustment Board, and no jurisdiction under Sections 1331 and 1337 of the Judicial Code although the provisions thereof have been interpreted to provide jurisdiction permitting enforcement by the District Courts of awards issued by airline system boards of adjustment. The Court of Appeals distinguished the airline cases on the ground that jurisdiction existed in Federal courts with respect to such awards because air carriers and their employees are required by Section 204 of the Railway Labor Act to establish such system boards for the determination of disputes under their collective bargaining agreements, and the Act contains no requirement for the railroads and their employees to establish special boards of adjustment for similar purposes.

REASONS FOR GRANTING WRIT

The decision of the Court of Appeals presents substantial and important questions as to the interpretation of the Railway Labor Act, as amended in 1966, and its principal objective to provide for the prompt and orderly settlement of disputes arising between the railroads and their employees, and the maintenance of stable labor relations. The rationale of the decision is in conflict with decisions of this Court and other Federal courts on the existence of federal jurisdiction to decide controversies arising under an act to regulate commerce.

I.

THE COURT OF APPEALS' DECISION RAISES SUBSTANTIAL AND IMPORTANT QUESTIONS OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

A. The Decision Raises Substantial and Important Questions of Federal Law With Regard to Settlement of Disputes Involving the Interpretation of Collective Bargaining Agreements Between the Railroads and Their Employees.

This Court has heretofore interpreted the Railway Labor Act as establishing a statutory scheme for final and binding determination by adjustment boards of employee grievances and disputes concerning the interpretation of collective bargaining agreements. *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana R. Co.*, 353 U.S. 30; *Slocum* v. *Delaware, Lackawanna & Western R. Co.*, 339 U.S. 239. Although prior decisions of this Court have made it clear that the Adjustment Board procedures are to be considered as compulsory arbitration in a limited field, constituting the complete and final means for settling minor disputes, and not permitting a federal district court to review an Adjustment Board's determination of the "merits" of a grievance, *Gunther* v. *San Diego*

and Arizona Eastern R. Co., 382 U.S. 257, the statute has been recognized as providing for limited judicial review of an award in favor of an employee when his employing carrier declines to comply with it. *Walker* v. *Southern R. Co.*, 385 U.S. 196.

In *Walker* (at page 198) the Court found also that Congress in enacting 1966 amendments to the Act, had drastically revised the procedures under the Act so as to provide for limited judicial review of awards by aggrieved employees, and the use of "special boards of adjustment" in an attempt to eliminate the backlog of cases before the National Railroad Adjustment Board causing employees to wait as long as ten years or more before decisions can be rendered on their claims.

Under the decision of the Court of Appeals the right of an employee aggrieved by an award to obtain limited judicial review, granted by the amendments to the Act made by Public Law 89-456, 80 Stat. 208, effective June 20, 1966, is available only with respect to awards issued by the divisions of the National Railroad Adjustment Board. The decision holds that judicial review is not available with respect to awards issued by special boards of adjustment established to provide for expeditious hearings on similar disputes, which railway employees are entitled to have, *Transportation-Communication Employees Union* v. *Union Pacific Railroad Company*, 358 U.S. 157, 162, and which the Act authorizes to be established, Section 3, Second, 45 U.S.C.A. 153, Second.

The decision of the Court of Appeals frustrates the intent of Congress to provide for resort to supplemental boards of adjustment for resolution of minor disputes otherwise referable to the National Railroad

Adjustment Board so as to relieve the backlog of cases before its divisions, and to eliminate the "unfair" and "incongruous" application of the Act prior to the amendments not permitting an employee aggrieved by an award to obtain a judicial determination of its validity. 2 Congressional and Administrative News (1966), page 2285. Compare *Southern Pacific Company* v. *Wilson*, (5th Cir. 1957) 378 F.2d 533.

The decision of the Court of Appeals that Special Board of Adjustment No. 605 is solely a product of a contract between private parties and only a "common law board of arbitration" established by parties otherwise subject to provisions of the Act, is contrary to the ruling of this Court in *T-C Employees Union, supra,* at pages 160-161; *Railway Employes' Department* v. *Hanson,* 351 U.S. 225, and other relevant decisions of this Court and other federal courts.

B. The Decision of the Court of Appeals Conflicts With Decisions of This Court and Other Federal Courts.

The decision of the Court of Appeals holds that jurisdiction to judicially review the involved award within the limits of Section 3, First (q) of the Act, is not available under Sections 1331 and 1337 of the Judicial Code. In *International Association of Machinists* v. *Central Airlines, Inc.,* 372 U.S. 682, this Court stated that although the Railway Labor Act did not specifically provide for judicial enforcement of awards issued by airline system boards of adjustment, there was no reason to believe that Congress discarded for an entire industry an element essential to a reliable system of settling disputs under existing contracts, or that it contemplated awards by adjustment boards the enforceability of which depended entirely upon the desires of the parties or upon state statutes or court decisions.

Contrary to the view of the Court of Appeals that the Special Board of Adjustment No. 605 is a common law board of arbitration created by a contract between private parties, this Court stated (at pages 692-695) in *Machinists* that the status of boards of adjustment created under the Act and the reviewability of their decisions are questions controlled by federal law.

In like fashion, the National Mediation Board (at pages 49-50) in its 32nd annual report for the fiscal year ending June 30, 1966, tacitly recognized, as it had in previous similar reports, the status of special boards of adjustment as being adjudicating bodies created under the Act for the prompt resolution of minor disputes which otherwise would be handled by divisions of the National Railroad Adjustment Board.[4]

The Court of Appeals' decision is also in conflict with the decisions in the following cases: *Northwest Airlines, Inc.* v. *Air Line Pilots Association,* (8th Cir. 1967), 373 F.2d 136; *Southern Pacific Company* v. *Wilson,* (5th Cir. 1967), 378 F.2d 533; *Bro. of Railroad Trainmen* v. *Denver & Rio Grande W.,* (10th Cir. 1967), 370 F.2d 833, *cert. denied,* 386 U.S. 1018; *Domingues* v. *National Airlines, Inc.,* (S.D. N.Y. 1968), 279 F. Supp. 392; *Bro. of Loco. Eng.* v. *Rio*

[4] The National Mediation Board, in describing the creation and function of railroad special boards of adjustment generally since 1957, has characterized them as an effective method for expediting the disposition of disputes through an adaptation of the grievance function of the divisions of the National Railroad Adjustment Board, and as a means for reducing the backlog of cases pending before the divisions.

Grande, (D.C. Colo. 1968), 290 F. Supp. 612, affirmed —— F.2d ——, 71 LRRM 2691 (June 19, 1969); *Transportation-Communication Employees Union* v. *St. Louis-San Francisco Ry. Co.,* (E.D. Mo. 1968), 296 F. Supp. 507.

II.

THE AWARD IS INVALID BECAUSE OF THE FAILURE OF THE SPECIAL BOARD TO CONFINE ITSELF TO MATTERS WITHIN ITS JURISDICTION.

The opinion of the Court of Appeals discloses its concentration on the issue of jurisdiction to review the award and furnishes only conclusory statements relating to the Brotherhood's contentions as to the invalidity of the award. The finding by the Court that Special Board No. 605 considered the questions submitted to it by the Brotherhood and concluded:

> from the two agreements presented, the tripartite agreement [of February 5, 1957] and the February 7 Agreement, that employment of the bargaining unit had shifted from Santa Fe to National when National took back its freight handling work. Thus it found that the employees were not "protected employees" within the meaning of the February 7 Agreement and were not entitled to benefits.

The questions submitted by the Brotherhood to the Special Board were designed to obtain a decision whether the employees who had performed the dock work as Santa Fé employees were entitled to the benefits of the February 7, 1965 job stabilization agreement when they were unable to "follow the work" and con-

tinue to perform their same duties as employees of National.

Judicial articulation since the amendment of the Act providing for limiting judicial review of adjustment board awards has not furnished any authoritative exposition of the legal significance of its specific provisions. The legislative history of the amendments shows, however, that "the limited grounds for judicial review provided in H.R. 706 are the same grounds that are provided in Section 9 of the Railway Labor Act and also Public Law 88-108, which provided arbitration for the so-called work rules dispute."

Section 3 of the Article VII of the February 7, 1965 agreement (Exhibit 2, p. 9, to Pet.) in like fashion as Section 8 (e) of the Railway Labor Act, 45 U.S.C.A. 158(e), relating to voluntary arbitration of disputes, provides that a notice in writing submitted to the Disputes Committees (Special Board) "shall state specifically the question to be submitted to the Committee [Special Board] for decision; and the Committee [Special Board] shall confine itself to decisions as to the questions so specifically submitted to it."

Section 9, Third (b) of the Act, 45 U.S.C.A. 159, Third (b), also relating to voluntary arbitration, in like fashion to Section 3, First (q) of the Act, 45 U.S.C.A. 153. First (q), provides that an award may be set aside (impeached) on the grounds that the award does not confine itself to the provisions of the agreement to arbitrate.

The finding by the Court of Appeals that the Special Board decision was based upon the "two" collective bargaining agreements presented, evidences the aware-

ness of that court that the Special Board did not confine its decision to the provisions of the February 7, 1965 agreement as to which alone it possessed jurisdiction to resolve disputes. The Santa Fe, which was the beneficiary of the award, itself, while before the Special Board, contended that the Special Board had no jurisdiction to arbitrate a dispute which could only be resolved by an interpretation of the 1957 tripartite agreement not properly before the Special Board, and not within its granted scope of jurisdiction.

Whether the award of the Special Board is viewed as a decision based on an interpretation of the provisions of "two agreements" as found by the Court of Appeals, or as a decision based on an interpretation of an interim judicial order entered in litigation involving unrelated issues, it is shown that the Special Board failed to confine itself to matters within its jurisdiction.

The erroneous and excessive departure by the Special Board from the scope of its jurisdiction is shown to have resulted from the Special Board's undertaking to frame and decide a question not "specifically submitted" to it. Obviously, if the Special Board believed that the questions submitted to it could not be resolved by recourse to the provisions of the February 7, 1965 agreement, it should have refused to decide the dispute. Clearly also, the Special Board had no authority to formulate a different dispute not determinable by an interpretation of the provisions of the Agreement by which the Special Board's jurisdiction was established.

The decision of the Court of Appeals when evaluated by the principles of relevant decisions under statutes containing similar limits of jurisdiction for arbitration

boards is shown to be patently unlawful. These decisions show that the Special Board functioning in the limited arena of an arbitration tribunal cannot be permitted the latitude to change the nature of the dispute submitted to it by adding to the questions presented, by creating an issue which cannot be decided by provisions of the basic agreement, resolve the added issue by interpreting a decision made in an unrelated dispute under an unrelated agreement as to which the Board had no jurisdiction, and use its decision on the added issue as the basis for its decision on the questions properly before it.

The action of the Special Board conflicts with the rule that an arbitrator has no authority to depart from the provisions of the agreement he is called upon to arbitrate, *United States* v. *Enterprise Wheel Corp.*, 363 U.S. 593; with the rule that a claim which "on its face" is not governed by the agreement is not properly subject to arbitration; *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543; and with the host of decisions that an arbitrator has no authority to "add" provisions to an agreement as to which he has jurisdiction to act, to add to the questions submitted for arbitration, or to dispense his own brand of industrial justice as a free agent. *Torrington Co.* v. *Metal Products Workers*, (2nd Cir. 1966), 362 F.2d 677; *Amalgamated Clothing Workers* v. *Iron All Factories Co.*, (6th Cir. 1967), 386 F.2d 586; *IAM* v. *Hays Corp.*, (5th Cir. 1961), 296 F.2d 238; *H. K. Porter Co., Inc.* v. *United Saw and File Products Workers*, (3rd Cir. 1964), 333 F.2d 596.

On its face, the "real issue" framed and added by the Special Board was not, as shown by the award and by the decision of the Court of Appeals, capable of reso-

lution by interpretation of the provisions of the 1965 job stabilization agreement. Judge Perry's order granting interim relief, which was interpreted by the Special Board, cannot be considered as a substantive decision interpreting the 1967 tripartite agreement and resolving a dispute thereunder as to which neither the District Court nor the Special Board possessed jurisdiction to undertake. *Brotherhood of Loco. Eng.* v. *Mo.-Kansas-Texas R.R.*, 363 U.S. 528.

The statement by the Court of Appeals that its decision is consistent with the national labor policy of avoiding court review of the "merits" of arbitration awards misses the mark and warrants the conclusion that the court did not comprehend the issue presented by the Brotherhood's petition for judicial review, or the scope of review permitted under the Act. The employment rights and benefits provided by the 1965 job stabilization agreement for the employees covered are entitled to the limited protection afforded by the Act requiring that in the determination of disputes as to the measure of such rights and benefits that the Adjustment Board confine the award to questions within its jurisdiction.

The decision of the Court of Appeals, if not set aside, will constitute a harmful judicial interpretation of the substance of the 1966 amendments to the Act which permit for the first time employees aggrieved by awards issued in resolution of minor disputes to obtain judicial review within limited compass.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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